

BOARD OF APPEALS CASE NO. 4859

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BEFORE THE

**APPLICANT: North American General
Contractor**

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ZONING HEARING EXAMINER

**REQUEST: Variance to construct an
addition within the required setback and
recorded easement in the GI District;
1207 Belmar Drive, Belcamp**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 12/9/98 & 12/16/98

HEARING DATE: February 3, 1999

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Record: 12/11/98 & 12/18/98

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ZONING HEARING EXAMINER'S DECISION

The Applicant, North American General Contractors, Inc., appeared before the Hearing Examiner requesting a variance from the requirements of Code Section 267-40(B), Table XV, to permit an attached accessory structure to be located less than the required 25 feet from the rear lot line, and a variance from the requirements of Section 267-26(C)(6) to permit the same structure to be located within a recorded easement area.

The subject parcel is owned by Hoover Universal, Inc. and is located at 1207 Belmar Drive, Belcamp, in the First Election District. The parcel is identified as Lot No. 4 on Parcel No. 336, in Grid 1A, on Tax Map 63. The parcel contains 6.5 acres more or less, all of which is zoned GI, General Industrial.

Mr. Jim Martin, President of North American General Contractors, Inc., appeared and testified that the subject property is used by Johnson Controls, Inc. for manufacturing purposes. Mr. Martin testified that Johnson Controls is seeking to enclose their railroad unloading area, and that the Applicant had been retained to construct the enclosure. He testified that the Applicant is requesting a variance to reduce the required building setback in the rear yard from 25 to 20 feet, and a variance to permit the enclosure to be constructed within a recorded easement area.

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Referring to Applicant's Exhibit No. 6 and its updates, Mr. Martin pointed out the location of the existing building, Belmar Drive, and the parking area. He further pointed out the main railroad line and the Johnson Controls railroad spur and unloading area which is the proposed location of the enclosure. He explained that there is no other feasible location for the enclosure and explained that due to Johnson Control's requirements and the requirements of CSX Transportation, the enclosure could not be reduced in size or reconfigured such that the requested variance would not be necessary. He noted that the rear of the building is placed as closely to the railroad as possible, and that this is the only area in which Johnson Controls may take advantage of its railroad spur.

Mr. Martin testified that the Johnson Controls lot is unique in that it was laid out specifically for the purpose of permitting its occupant to take advantage of the railroad spur, and that not every lot in the Riverside Business Park has its own railroad spur. He further testified that unlike other buildings, the Johnson Controls building had been placed as close to the railroad spur as possible to optimize its use, and that the Johnson Controls manufacturing layout is designed around the railroad unloading location. He testified that the only area between the building and the main railroad line, i.e., the Johnson Controls rear lot line, is the railroad maintenance and utility easement in which the railroad spur lies.

Mr. Martin testified that a denial of the variance would cause the Applicant practical difficulty because without the required variance, the enclosure could not be built. He also testified that he did not feel that granting the variance would hurt anyone, and that the proposed enclosure would actually provide additional safety improvements for unloading activities. He further testified that although Johnson Control's unloading activities produce no noise, odors, dust, fumes or vibration, the enclosure would buffer or prevent any such disturbances if they were to occur.

Mr. Martin also testified that he had reviewed the Department of Planning and Zoning's Staff Report and he said that the conditions of approval recommended by the Department therein were acceptable.

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The Staff Report of the Department of Planning and Zoning indicates that there are two railroad lines behind the property, one of which runs directly behind the subject building. Although that spur is within a recorded 40 foot railroad maintenance and utility easement, it is used solely by the Applicant.

No protestants appeared in opposition to the Applicant's request.

CONCLUSION:

Section 267-11 of the Harford County Code permits area variances, provided that the Board finds that:

1. By reason of the uniqueness of the property or topographical conditions literal enforcement of Part 1 will result in practical difficulty or unreasonable hardship.
2. The variance will not be substantially detrimental to adjacent properties and will not materially impair the purposes of this Part 1 or the public interest.

The concept of uniqueness in variance cases was discussed by the Court of Special Appeals in the case of North v. St. Mary's County, 99 Md. App. 502, 638 A.2d 1175 (1994) wherein the court stated:

In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls.

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The Court of Appeals of Maryland in McLean v. Soley, 270 Md. 208, 310 A.2d 783 (1973) held that the following criteria are to be used for determining whether “practical difficulty” has been established:

1. Whether strict compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the use of the property for a permitted purpose or render conformity with such restrictions unnecessarily burdensome.
2. Whether a grant of the variance applied for would do substantial justice to the applicant as well as other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
3. Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Based on the unrebutted and uncontradicted evidence presented, the Applicant has met the burden of proof. Unlike other industrial parcels, the Johnson Controls property is improved with an individual railroad spur. The presence of this railroad spur has determined the location of the Johnson Controls building as close as possible to its rear lot line, and has determined the layout of the Johnson Controls manufacturing operation within the building. The rear lot line of the parcel is the very railroad line which the lot, building and railroad spur are designed to access. These factors make the subject property unique.

Under McLean v. Soley, denial of the variance would result in practical difficulty to the Applicant. Here, denial of the variance would unreasonably prevent the use of the subject property for a permitted purpose, i.e., as the site of an enclosure for the railroad spur located there. The Department of Planning and Zoning has recommended approval of the variances, as have CSX Transportation and the Riverside Business Park Improvement Association, Inc., as evidenced by Applicant’s Exhibits No. 8 and No. 9. Under all these circumstances, it would be unnecessarily burdensome to require the 25 foot building or use set back to be maintained.

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Additionally, it would be unnecessarily burdensome to prevent construction of the enclosure for railroad purposes within the railroad maintenance and utility easement area. Unless the building or use setback is reduced to 20 feet, the enclosure, which cannot be reduced in size or reconfigured, cannot be built. If the enclosure cannot be constructed within the forty foot maintenance and utility easement, it cannot be constructed at all because of the location of the building and spur. Thus, no lesser relaxation of the setback requirements could give substantial relief to the Applicant.

The variances will not be detrimental to adjoining properties and will not materially impair the purpose of the Code. The testimony showed that no adverse impacts will result from approval of the variances and that the enclosure would actually enhance public safety. The purpose behind the setback requirement, i.e., to make sure that adjoining developments are not adversely impacted by manufacturing uses, will clearly be satisfied if the requested variance is granted. The testimony further showed that the proposed railroad spur enclosure meets the purpose of the railroad maintenance and utility easement. Thus all elements of Section 267-11 are met. The variances should be granted.

Therefore, it is the recommendation of the Hearing Examiner that the requested variances be approved, subject to the condition that the Applicant obtain all necessary permits and inspections to construct the enclosure.

Date FEBRUARY 10, 1999

L. A. Hinderhofer
Zoning Hearing Examiner